

The Honorable Robert S. Lasnik



06-CR-00109-CJA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KAVU, INC., on behalf of itself and all others
similarly situated,

Plaintiff,

v.

OMNIPAK CORPORATION,

Defendant.

No. C06-0109 RSL

**ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT, AMENDED NOTICE
TO CLASS MEMBERS, AND
SCHEDULING FINAL SETTLEMENT
HEARING**

The Plaintiff's Unopposed Motion Seeking Preliminary Approval of Settlement Agreement, Notice to Class Members, and Scheduling a Final Settlement Hearing has come before this Court. The parties have agreed, subject to final approval by this Court following notice to the Class, to settle this action upon the terms and conditions set forth in the Settlement Agreement. The Court has reviewed the Settlement Agreement, as well as all files, records, and proceedings to date in this matter.

IT IS HEREBY ORDERED:

1. **Preliminary Approval of Proposed Settlement.** The Settlement Agreement is preliminarily approved as fundamentally fair, reasonable and adequate. The Settlement Agreement is the product of arms-length bargaining that took place during settlement negotiations with experienced Class counsel. The Court also finds that notice to members of

1 the Class should be provided and a hearing on the Settlement Agreement should be held as set
2 forth in this Order.

3 2. **Stay of Proceedings.** All discovery and other pretrial proceedings in this action
4 are hereby stayed and suspended until further order of the Court, except such actions as may be
5 necessary to implement the Settlement Agreement and this Order. The trial date and all
6 discovery and filing deadlines relating thereto are hereby vacated.

7 3. **Settlement Hearing.** A final approval hearing (the "Settlement Hearing" or
8 "final hearing") shall be held before this Court on **January 24, 2008, at 8:30 a.m.**, to
9 determine whether the Settlement Agreement is fair, reasonable and adequate and should be
10 approved. The Settlement Hearing may be postponed, adjourned, or continued by order of the
11 Court without further notice to the Class. After the Settlement Hearing, the Court may enter
12 the Final Approval Order And Judgment (Exhibit C to the Settlement Agreement) that will
13 adjudicate the rights of the Class members.

14 4. **Notice.** No later than twenty (20) days after the date of this Order, Class
15 Counsel shall have a copy of the Notice Of Class Action And Settlement Hearing in
16 substantially the same form as Exhibit A of the Declaration Of Mark A. Griffin In Support Of
17 Plaintiff's Motion For Approval Of Amended Notice Of Class Action And Settlement Hearing¹
18 mailed by First Class Mail, Postage Prepaid, to all members of the Class. Pursuant to the Order
19 Granting Motion To Approve Class Notice (Docket No. 66), Defendant will provide Class
20 Counsel with a list of names and addresses of all members of the Class in electronic form.

21 5. **Findings Concerning Notice.** The Court finds that this notice is the best
22 practicable notice under the circumstances and is as likely as any other form of notice, to
23 apprise class members of the Order Granting In Part And Denying In Part Motion For Class
24 Certification (Docket No. 44), the Settlement Agreement, and their rights to opt-out, object, and
25 make a claim. The Court further finds that the notice is reasonable, that it constitutes due,

26 ¹ Prior to being sent to Class members, the Notice should include corrections of the
27 typographical errors in the second line of page 3 of the Notice and in the first line of page 5 of
the Notice.

adequate and sufficient notice to all persons entitled to receive notice, and that it meets the requirements of Due Process.

6. **Papers in Support of Settlement.** The parties to the Agreement may file additional papers in support of the proposed settlement six (6) calendar days prior to the final hearing.

7. **Right to Exclude.** Any Class member may choose to be excluded from the Class by signing and returning a Request For Exclusion postmarked no later than **January 3, 2008**, as set forth more fully in the Notice.

8. **Objections and Appearances**

(a) **Written Objections.** Any Class member may object to the fairness, reasonableness or adequacy of the Agreement. Class members may do so either on their own or through counsel hired at their own expense. Any Class member who wishes to make a written objection to the Settlement Agreement must serve a written statement of objection along with any other supporting materials, papers or briefs that he or she wishes the Court to consider no later than **January 3, 2008** and must on that same date serve such papers by first class mail on:

Mark A. Griffin
Keller Rohrbach L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052

and

Cheryl R. G. Adamson
Rettig, Osborne, Forgette, O'Donnell, Iller & Adamson, LLP
6725 W. Clearwater Ave.
Kennewick, WA 99336-1788

Any such objections will be filed with the Court by Class Counsel no later than six (6) judicial days before the Settlement Hearing so the Court may consider them.

(b) **Appearance at Settlement Hearing.** Any Class member who has served an objection may appear at the Settlement Hearing, either in person or through counsel hired at the Class member's expense, and object to the fairness, reasonableness

1 or adequacy of the Settlement Agreement. Any Class Member who chooses to be heard
 2 must send a written notice of intent to appear on Class Counsel at the address listed
 3 above by the same date that objections are due.

4 9. **Effect of Failure to Approve the Settlement Agreement.** In the event the
 5 Court or any other court (a) disapproves, sets aside, or modifies this Agreement, (b) declines
 6 for any reason to enter or give effect to a Preliminary Approval Order, (c) declines for any
 7 reason to enter or give effect to a Final Approval Order And Judgment, or (d) holds that the
 8 Final Approval Order And Judgment, or any judgment entered pursuant thereto, should in any
 9 material part be overturned or modified in any material way, then the Settlement Agreement
 10 shall become null and void, the Action shall be deemed to revert to its status as of the date and
 11 time immediately prior to the execution of the Agreement, and the parties shall jointly move
 12 that any and all orders entered pursuant to the Agreement be vacated and shall proceed with the
 13 Action as if the Agreement had never been executed; provided, however, that in the event that
 14 the parties, within fifteen (15) days of any such action of any court, jointly elect to appeal from
 15 or otherwise seek review or reconsideration of such court action, the Agreement shall not be
 16 deemed null and void until such time as such court action becomes final after any proceedings
 17 arising directly or indirectly from the parties' appeal(s) or other attempt(s) to have such court
 18 action reversed, withdrawn, or overturned.

19 10. **Compliance with Class Action Fairness Act.** Defendant is directed to file,
 20 within 10 days from the date of this order, a statement of whether it has complied with 28
 21 U.S.C. § 1715(b) of the Class Action Fairness Act by sending a copy of this order and the
 22 amended class notice to the appropriate officials.

23 IT IS SO ORDERED.

24 DATED: Sept. 14, 2007.

25 

26 The Honorable Robert S. Lasnik
 27 United States District Court

1
2 Presented by:

3 Keller Rohrbach L.L.P.

4 By

Mark A. Griffin, WSBA #16296

5 Williamson and Williams

6 Rob Williamson, WSBA #11387

Attorneys for Plaintiff Class